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TRACKS EDITION:**

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**UPCOMING
EVENTS:**

1st OPD Trial skills "Boot Camp" **Oct 24-27**

Juvenile Justice Summit Meeting **Oct 30-31**

Criminal Defense Jury Instructions CD coming soon **Nov 30**

Vision Net Training **On now**

Mental Health Advocacy Training **Nov 8,9 @ MSH**

DVD training on Guardianships & Conservatorships **Dec 1**

Training Tracks

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SEPTEMBER, 2006

1st Annual Trial Skills Boot Camp

Experienced criminal defense lawyers from around Montana will join together at the U of M's Lubrecht Conference Center during the last week of October to assist OPD in conducting the first annual new lawyer trial skills boot camp program. Twenty OPD staff attorneys, new to the practice of criminal law or having returned after a period of absence, have been selected by Chief Public Defender Randi to participate as members of a five-person trial team. Each team will work on a separate case, mentored by Randi Hood, Eric Olson, Brian Smith, and

Kelli Sather. Assisting with the overall trial instruction will be Tony Gallagher (Federal Defender for Montana), Greg Jackson (capital defense attorney, Helena), Kenneth Olson (Great Falls), Missoula attorney Michael Sherwood, and Regional Deputy Public Director Ed Sheehy. Also assisting with the instructional agenda will be Attorney Rob Hoskins (capital trial lawyer, Tampa, Florida — a former Montana defender), and Professor George Critchlow, former acting dean of the Gonzaga University School of Law. Boot camp attendees will

develop presentations in areas of voir dire, opening statements, cross examination, closing arguments, trial evidence, jury instructions, and developing positive and winning case themes.



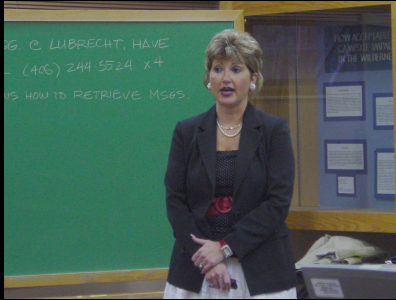
OPD is capturing many of the training sessions on videotape for future reference.

Mental health advocacy training: 11/8

OPD attorneys involved in handling civil commitments and other mental health matters will be invited to attend an OPD in-house training session to further their skills as advocates for mentally disabled clients. With the assistance of the Montana Advocacy Program and personnel from the Montana DPHHS, OPD staff lawyers

and contract attorneys will gather at the Montana State Hospital at Warm Springs on November 8-9. Convening the training at MSH puts OPD lawyers on-the-scene of the treatment facility in order to allow each of the participants to become "first hand familiar" with the state's largest mental health institution. Providing instruction will be Dr. Polly Peterson, Direc-

tor of Psychological Services at MSH, staff advocates from MAP, "volunteer consumers" trained by the National Association for the Mentally Ill, and lawyers versed in the nuances of this highly demanding field of law. This conference will bring together individuals at the heart of the indigent civil commitment practice in Montana. Contact the regional deputy public defender in your region if you are interested in attending.



Pam Sharp (above), Senior Investigator and Training Director for the Colorado Public Defender Investigators, and Michael McGruder (below) former electronic investigative specialist for the CPD, helped coordinate recent Phase I training for the Montana Public Defender Investigators



"We think of ourselves as grasshoppers," says Pam Sharp of the Colorado Defender Investigators. "We are an army working zealously to derail the freight train of injustice."

Colorado investigators help with investigator training

Pamela Sharp, head of investigator training for the Colorado Public Defenders, traveled to Montana over the weekend of August 25-27 to assist the OPD training office in conducting a comprehensive investigative workshop. Assisted by Michael McGruder, a former CPD investigator now in private business with his own electronic technology support company, Sharp presented a variety of interesting and challenging train-

ing sessions aimed at helping investigators understand, develop and apply the essential skills and knowledge they require in order to provide much-needed case investigation assistance to defenders in all parts of the state. Also keenly involved in the hands-on portion of the instructional program were Missoula criminal defense attorney Mike Sherwood, University of Washington Law School Clinical Instructor George Yeannakis, Dr. Polly Peterson (Director of Psychological Services at the Montana State Hospi-

tal), Anita Roessman (an attorney with the Montana Advocacy Program), and OPD Training Coordinator Eric Olson. Staff investigators from all eleven regions (and every OPD office) attended this two-day program. At the conclusion of the training, Sharp (who will certify Montana's investigators in accordance with the stringent standards used by the COPD) observed that MOPD investigators are well on the road to being among the nation's best trained defense investigators.

October 30-31, 2006: Juvenile Justice Training

In conjunction with the Montana Board of Crime Control, the Casey Foundation's Juvenile Detention Alternatives Program, the Montana Law Enforcement Academy, and the Montana Youth Justice Counsel, among others, the OPD is co-sponsoring a multi-disciplinary juvenile justice training conference at the University of Montana

(Missoula) on October 30 and 31, 2006. With both plenary and break-out sessions planned, participants will be provided with the opportunity to receive training in a wide range of areas pertaining to juvenile justice and youth court issues. Of particular interest to defenders are presentations by Northwest Regional juvenile defender George Yeannakis, and Indian Child Welfare

expert Theresa Schneder (Bilings). During the afternoon of the second day of the conference, OPD attorneys will meet for a strategy and summit meeting. Invitations have been extended through regional deputies. If you are interested in attending, contact the deputy public defender in your region.

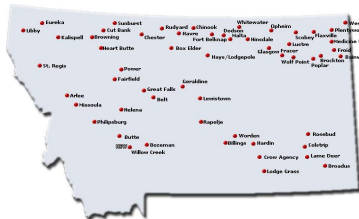


THE MONTANA PUBLIC DEFENDER CRIMINAL INVESTIGATORS

Vision Net Training Underway for OPD

Training sessions conducted through use of the state's video teleconferencing facilities is well underway. The OPD has already utilized the Vision Net system to present training to attorneys in the Billings Region, and another session is booked for September 28, when Region 3 Deputy Defender Kristina Neal will address OPD attorneys from around the state on the continuing topic of understanding and coping with claims for ineffective assistance of counsel claims. Vision Net works by beaming a

video and audio signal from a primary site to video terminals located in courthouses and other select



locations around the state. Because it is important for all OPD offices to be technically adept at

running the conferencing equipment, Vision Net has scheduled local site training sessions around the state of Montana during the months of September and October. Office administrators in each OPD office will be trained on how the system works so that they can assist participating attorneys in setting up and operating the individuals. Attorneys interested in developing proficiency with the system are also urged to attend. For more info, call Eric or contact Vision Net (aoneal@mt.gov).

"Since a co-tenant wishing to open the door to a third party has no recognized authority in law or social practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all.

Justice Souter, in Georgia v. Randolph, 126 S.Ct. 1515 (2005), upholding suppression of husband's drugs where wife consented to search but husband objected.

Appellate Defenders digest now available

Annual digests of Montana Supreme Court decisions for 2004-2006 are available at:

<http://psmine.state.mt.us/opd/mtscdtdisions/2007/oct2006.pdf>

Also available at the same site are digests of more recent relevant Montana Supreme Court decisions. And, effective November 1, 2006, the training office and the OPD appellate division will begin

conducting quarterly telenet sessions reviewing Supreme Court cases of particular interest to defenders. Look for more specifics in the next Training Tracks.

Among recent decisions issued by the Montana Supreme Court since July 1, 2006, the following should be noted: **State v. Barnaby**, 2006 MT 203 (search warrant and *Batson* challenges rejected, but case remanded b/c court failed to con-

sider prison alternatives); **MH and GH**, 2006 MT 208 (no jury right in D/N cases); and **Matter of AK**, 2006 MT 166 ("mental disorder" does not include mental retardation; thus commitment not supported where judge failed to link retardation cognitive delays to "imminent dangerousness.") Contact the Appellate Division attorneys at 406-841-2001.

Federal consequences of state court convictions

The recent passage of the federal "Adam Walsh Child Protection and Safety Act" by Congress has prompted the Montana Public Defender Commission to remind the training office that all OPD defenders must be fully informed as to the federal consequences of state law convictions, an issue with potentially far-reaching, and hugely deleterious effects on our clients. In order to accomplish that,

OPD, in conjunction with Commission Member and federal criminal defense attorney, Wendy Holton, will offer training on that topic in early January of 2007. (Consult the next edition for specifics. In the meantime, if you need a "primer" on the interaction between federal-state criminal laws, please visit the OPD intranet site at <http://psmine.state.mt.us/opd/training/fedcons.pdf>.



From the "Maybe Things Aren't as Bad as I Thought They Were" Department:

Attorneys who work as public defenders in Wisconsin get paid a maximum rate of \$40 an hour.

Critics say that rate is so low that it is becoming very difficult to find lawyers willing to provide critical indigent defense services. (**AP wire services**, 9/5/06.) And in Virginia (ranked last in the nation in indigent attorney's fees) defenders are paid so little they are contemplating suing the state, which recently refused to pass remedial legislation. (*Fredericksburg Free-Lance Star*, 9/3/06.).

What's Up with this "Conservatorship" Stuff ?

The Montana Public Defender Act imposes upon Montana Public Defenders responsibility for representing indigent clients in a wide number of criminal and non-criminal proceedings, including guardianship / conservatorship cases. (These are matters not within the purview of a "traditional" public defender system.) In order to assist public defenders in securing the specific training necessary to fulfill the Commission Standards pertaining to guardianship and conservatorship law, staff attorneys from the Montana Advocacy Program have agreed to assist MPD in developing a fast-track training program which should be available via DVD and handbook to all OPD offices by late November, 2006.

Central office (Butte) 406-496-6080

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(Above) Montana Public Defender Commission Member Michael Sherwood guides investigators through the confusing world of criminal discovery and disclosure.

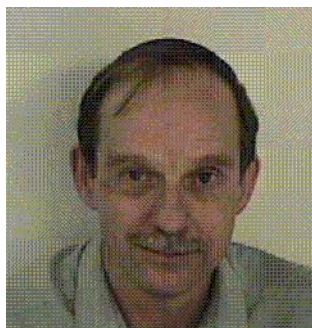
Profiles: Ed Sheehy (Regional Deputy)

Serving as "stand-by counsel" for a criminal defendant is nasty work, as most of us can attest. But can any of us imagine a more wicked irony than the one Ed Sheehy was forced to face recently?

In accordance with "the lawful sentence of the court," the State of Montana executed convicted triple murderer David Dawson on August 11, 2006. Present at the prison at the time of execution was Ed Sheehy, Regional Deputy Public Defender for Region 2 (Missoula). Ed had been serving as "stand-by counsel" for Dawson since 2005, when the defendant, Dawson, "fired" his court appointed attorneys and elected to proceed to execution as a "volunteer." Sheehy, a lifelong opponent of capital punishment, was placed in the unenviable position of having to

honor the duty of loyalty by addressing a federal district court at an "11th hour" hearing and reaffirming to the court his client's strongly expressed and unambiguous wish to die on schedule.

The nephew of Justice John C. Sheehy, Ed Sheehy graduated from Gonzaga University School of Law in



1978. Since that date, he has tried many complex criminal cases, including capital homicides. Earlier this year Ed successfully argued to a state district judge that a defendant who shot and killed an on-

duty deputy sheriff should be spared the ultimate sanction. According to Ed, "over the course of the past 28 years, I have appeared in court on behalf of clients in every county courthouse in Montana."

The Montana Public Defenders Eleven Regions. One Mission.

"To provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense." 47-1-101, MCA